

m 1049/021

58617

RECEIVED

MAR 30 2005

DIV OF OIL GAS & MINING

MITCHELL D. MAUGHAN, P.C.
MITCHELL D. MAUGHAN, #6419
Attorney for Plaintiffs
148 North Main
Spanish Fork, Utah 84660
Telephone: (801) 794-1016
Facsimile: (801) 794-1017

3.23.5 2106
Served _____
Relationship _____
Time _____ Date _____
Address _____
Constable Services 561-4278

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
STATE OF UTAH, PROVO DEPARTMENT

EMERY INDUSTRIAL RESOURCES, INC. :
INC., a Utah Corporation and DAN POWELL, :
an Individual :

SUMMONS

Plaintiffs, :

vs. :

District:

E.J. STOKES, Individually; LARRY JENSEN, :
Individually, NELCO CONTRACTOR'S INC., :
a Utah Corporation and JOHN DOES 1-10, :
Defendants. :

Civil No. 050400718

THE STATE OF UTAH TO Respondent E.J. STOKES:

You are hereby summoned and required to file an Answer in writing to the attached Complaint with the clerk of the above-entitled court, and to serve upon, or mail to Mitchell D. Maughan, Plaintiff's attorney, at 148 North Main, Spanish Fork, Utah 84660, a copy of said Answer within twenty (20) days after service of this Summons upon you. If you fail to do so judgment by default will be taken against you for the relief demanded in said Complaint which

has been filed with the clerk of said Court and a copy of which is attached hereto and herewith served upon you.

DATED this 9 day of March, 2005.

MITCHELL D. MAUGHAN, P.C.



MITCHELL D. MAUGHAN
Attorney for Plaintiffs

Court's Address:
125 North 100 West
P.O. Box 1847
Provo, Utah 84603

Defendant E.J. Stokes' Address:
52 South 350 East
North Salt Lake City, Utah 84054

MITCHELL D. MAUGHAN, P.C.
MITCHELL D. MAUGHAN, #6419
Attorney for Plaintiffs
148 North Main
Spanish Fork, Utah 84660
Telephone: (801) 794-1016
Facsimile: (801) 794-1017

**IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
STATE OF UTAH, PROVO DEPARTMENT**

EMERY INDUSTRIAL RESOURCES, INC. : COMPLAINT
INC., a Utah Corporation and DAN POWELL,
an Individual

Plaintiffs, :

vs.

: District:

E.J. STOKES, Individually; LARRY JENSEN,
Individually, NELCO CONTRACTOR'S INC., :
a Utah Corporation and JOHN DOES 1-10,
Defendants. :

Civil No. 050400718

Plaintiffs, by and through counsel, Mitchell D. Maughan hereby complains against

Defendants as follows:

JURISDICTION AND PARTIES

1. Plaintiff Dan Powell is an individual residing in Utah County, Utah.
2. Plaintiff Emery Industrial Resources, Inc. is a Utah corporation in good standing doing business in Utah County, Utah.

3. Defendant E.J. Stokes (Stokes) is a resident of Salt Lake County, Utah.
4. Defendant Larry Jensen is an individual residing in Carbon County, Utah.
5. Defendant Nelco Contractors Inc. is a Utah Corporation in good standing with its principal place of business located in Carbon County, Utah. Defendant Larry Jensen is a principal of Nelco Contractors and an authorized agent.
6. Defendants John and Jane Does 1-100 are other individuals or entities whose identities are presently uncertain to plaintiffs who may claim an interest in the minerals and/or surface rights in and to the subject property which claim is adverse to plaintiffs, and such claims are adverse or constitute a cloud on plaintiffs' leasehold title to the property, and/or other related interests.
7. Jurisdiction is proper in the above-entitled court because the property which is the subject of this action is located in the Utah County, State of Utah.

GENERAL ALLEGATIONS

8. Upon information and belief, Stokes is the owner in fee to the property that is the subject of this action. The property contains a "quarry" known as The Cherry Hill Park Quarry which is located on property located in Utah County and described as follows:

The West ½ of Section 36, and the SE 1/4 at SW 1/4 of Section 25, situated in Township 11 South, Range 8 East, Salt Lake Base and Meridian.

9. On the 26th day of June 1992, Stokes entered into a Lease and Agreement wherein Stokes, as lessor agreed to lease to Dan L. Powell and Gerald B. Powell dba Emery Industrial Resources, Inc. as lessee, mineral rights, principally, limestone and surface rights for a primary term of four years, and so long thereafter as limestone is mined from the property in commercial quantities, a copy of the Lease and Agreement is attached hereto as Exhibit "A".

10. Among other things, the lease gave plaintiffs the right to explore, develop and mine limestone from the property in exchange for Plaintiffs paying Stokes certain royalty payments.

11. The lease was amended on the 4th day of October, 1992. The amendment provided that plaintiffs would pay Stokes a royalty payment of twenty five cents (0.25), per ton of Limestone mined and removed from the property, a copy of the amended lease is attached hereto as Exhibit "B".

12. After signing the lease plaintiffs immediately began preparatory work to mine, extract and sell limestone. In July of 1992, plaintiffs' application to mine limestone from the property was approved by The State of Utah.

13. In March of 1993, Dan L. Powell and Gerald B. Powell doing business as Emery Industrial, Resources, Inc. assigned their interest in the lease to Emery Industrial Resources, Inc.

14. Plaintiffs began mining operations in 1993 and began extracting limestone from the property in commercial quantities. In 1993 plaintiffs entered into a written agreement with Deseret Generation and Transmission Co-Op, ("DG&T") for the purchase and sale of limestone.

15. Pursuant to the agreement, from 1993 to 1996, plaintiffs sold limestone to DG&T and plaintiffs paid Stokes royalty payments as provided in their lease. Plaintiffs also sold limestone and limestone products to other customers during this time period and tendered the requisite royalty payments to Stokes.

16. In October of 1996, the contract between DG&T terminated and plaintiffs did not sell limestone to DG&T for the remainder of that year and in 1997. In 1997, plaintiffs did not produce any limestone in commercial quantities.

17. In 1998, plaintiffs and DG&T again entered into an agreement for the purchase and sale of limestone. Plaintiffs again produced limestone in commercial quantities and sold said limestone to DG&T in 1998 and 1999. Plaintiffs paid Stokes royalty payments as provided in the lease.

18. In 1999, plaintiffs' relationship with DG&T terminated and plaintiffs began soliciting bids from other potential customers for the sale of limestone. During this time, plaintiffs continued to mine, extract and stockpile limestone from the property.

19. In July of 2003, plaintiffs entered into an agreement with Steve Powell dba Powell Rock Products, wherein Steve Powell agreed to help plaintiffs with reclamation and to help market and sell the limestone. During this time, Powell entered into a relationship with Larry Jensen of Nelco Contractors, Inc. ("Nelco") wherein Jensen helped Powell with the reclamation and sale of the limestone. Through this relationship, Jensen became familiar with Plaintiffs' customers and their mining operation.

20. In 2003, plaintiffs and The Division of Oil, Gas and Mining for the State of Utah ("DOGM") began having disputes over plaintiffs' reclamation of the mined property. DOGM alleged that plaintiffs had failed to comply with certain reclamation requirements imposed by the State and temporarily suspended plaintiffs' mining operations pending a resolution of the matter.

21. As part of the resolution, plaintiffs were required to post a bond with DOGM and meet certain other requirements, one of which was to show that plaintiffs had a valid lease agreement with Stokes.

22. In 2004 Stokes and Jensen began conspiring against plaintiffs in an effort to take over plaintiffs' mining operation and related business. They began a course of conduct to freeze plaintiffs out of mining operations in order to make it more profitable for them.

23. In July of 2004 after Stokes had began a business venture with Jensen, Stokes sent plaintiffs a letter stating that the lease agreement had terminated because of plaintiffs' failure to mine limestone in commercial quantities.

24. Plaintiffs continued to extract limestone in 2004 pursuant to a letter of understanding and other agreements with DOGM and tendered Stokes royalty payments pursuant to their lease agreement.

25. In September of 2004, defendants changed the locks on gates leading to the property and prohibited plaintiffs from entering the property.

26. As part of the resolution of the reclamation dispute, DOGM required plaintiffs to show that it had a valid lease for mining limestone on the property. Despite receiving royalty payments from plaintiffs as late as the fall of 2004, Stokes refused to provide or otherwise consent to plaintiffs having a valid lease agreement, thereby prejudicing plaintiffs in their ability to get licensure from the State.

27. Stoke's refusal to acknowledge a valid lease agreement with plaintiffs or to otherwise negotiate a new lease agreement with plaintiffs, ultimately resulted in DOGM terminating plaintiffs' mining activities on the property.,

28. Presently, plaintiffs are prohibited from any mining operations on the property because of their inability to demonstrate to DOGM that they have a valid lease agreement with Stokes.

29. Prior to and subsequent to DOGM terminating plaintiffs' mining operations, defendants have aggressively undertaken actions to hinder plaintiffs' ability to mine the property and they have taken over all mining operations and activities on the property. They have commenced paperwork to obtain approval and licences from DOGM and other agencies to mine the property in their own right capitalizing on and benefitting from work already performed and completed by plaintiffs.

30. Plaintiffs expended monies for mining, crushing, screening, and transporting limestone materials that were and are stockpiled on the property. Defendants and each of them, have taken limestone material of which was mined, crushed, screened, and transported by Plaintiffs and/or Plaintiffs' contractors without Plaintiffs' authorization/approval and sold said product to others.

FIRST CAUSE OF ACTION

(Declaratory Relief)

31. Plaintiffs incorporate allegations 1 through 30 into this cause of action as if full set forth herein.

32. Since the inception of the lease, plaintiffs have at all times relevant hereto mined and produced limestone in commercial quantities and otherwise complied with the terms and provisions of the lease.

33. Since the inception of the lease and all times relevant hereto, plaintiffs have tendered Stokes royalty payments as provided in the lease.

34. Defendants and each of them have in bad faith attempted to undermine plaintiffs' mining operations and otherwise prevented plaintiffs from carrying on mining operations on the property in an effort to capitalize on work and efforts already performed by plaintiffs at a pecuniary gain to defendants and each of them.

35. Plaintiffs, their assigns and successors in interest have a valid and legal lease agreement with Stokes.

36. Plaintiffs are entitled to a declaration that the lease agreement is binding and in full force and effect and an order granting plaintiffs ingress and egress to the property.

37. Because of Stoke's actions, plaintiffs have been required to obtain the services of an attorney and is entitled to attorney fees for having to bring this action.

SECOND CLAUSE OF ACTION

(Breach of Contract)

38. Plaintiffs incorporate allegations 1 through 37 into this cause of action as if full set forth herein.

39. Stokes has in bad faith attempted to undermine plaintiffs' mining operations and otherwise prevented plaintiffs from carrying on mining operations on the property in an effort to capitalize on work and efforts already performed by plaintiffs at a pecuniary gain to defendants and each of them.

40. Stokes has conspired with others to deprive plaintiffs of their right, title, and interest in and to the lease agreement and has otherwise breached the terms of said agreement, including the covenant of good faith and fair dealing.

41. Stokes and each of them have further prevented plaintiffs from being able to perform under the lease agreement.

42. As a direct result of Stoke's acts and omissions, plaintiffs have been damaged in the amount to be prove at trial, for which amount the plaintiffs are entitled to recover.

43. Because of Stoke's actions, plaintiffs have been required to obtain the services of an attorney and is entitled to attorney fees for having to bring this action.

THIRD CAUSE OF ACTION

(Unjust Enrichment)

44. Plaintiffs incorporate allegations 1 through 43 into this cause of action as if full set forth herein.

45. Defendants and each of them have received goods and services from plaintiffs in that defendants and each of them have wrongfully received monies from the sale of limestone and has also benefitted from plaintiffs' mining, crushing and screening operations and the stockpiled limestone on the property.

46. The reasonable value of the materials and labor supplied by plaintiffs and monies received by defendants and each of them is unknown but will be proved at trial.

47. Defendants and each of them knew that plaintiffs were providing labor and materials for mining operations and have appreciated the benefit.

48. Defendant has been unjustly enriched in an amount to be proven at trial for which it would be unfair for defendants and each of them to retain this benefit without paying for it.

49. Because of Defendants' actions, plaintiffs have been required to obtain the services of an attorney and is entitled to attorney fees for having to bring this action.

FOURTH CAUSE OF ACTION

(Misappropriation and Conversion of Property)

50. Plaintiffs incorporate allegations 1 through 49 into this cause of action as if full set forth herein.

51. Plaintiffs expended monies for mining, crushing, screening, and transporting limestone materials that were and are stockpiled on the property.

52. Plaintiffs are the owner of this limestone material subject to royalty payments as provided in the lease.

53. Defendants and each of them have taken limestone material of which was mined, crushed, screened, and transported by Plaintiffs and/or Plaintiffs' contractors without plaintiffs' authorization/approval and sold the product to others.

54. Defendants and each of them have wrongfully converted and exercised control over the limestone and monies received from the sale of said limestone for his own pecuniary gain.

55. Defendants and each of them continue to sell limestone and limestone product to customers generated by plaintiffs through Steve Powell. Most of the limestone was quarried and mined by plaintiffs and waiting sale to these customers by plaintiffs pending their resolution with the State. Plaintiffs through Steve Powell had and have valid agreements with these customers. Defendants and each of them have interfered with plaintiffs relations with said customers and have converted funds form said customers due and owing plaintiffs for their own pecuniary gain.

56. As a result of Defendants' actions, plaintiffs have been damaged in an amount to be proven at trial.

57. Defendants' actions continue to cause plaintiffs irreparable harm. Plaintiffs are entitled to injunctive relief preventing further damage to Plaintiffs.

58. Defendants' actions are willful, malicious and in bad faith. Plaintiffs are entitled to recover punitive damages in an appropriate amount but not less than \$250,000.00.

59. Because of Defendants actions, plaintiffs have been required to obtain the services of an attorney and is entitled to attorney fees for having to bring this action.

60. Plaintiffs are entitled to attorney's fees and to be indemnified for having to pursue the claims of this complaint and to protect Plaintiffs' rights through said Agreements

FIFTH CAUSE OF ACTION

(Misrepresentation and/or Theft by Deception)

61. Plaintiffs incorporate allegations 1 through 60 into this cause of action as if full set forth herein.

62. Defendants and each of them have affirmatively represented to others that he is the owner of the limestone and limestone product in the quarry; that he has the sole right and authority to deal in and sell said limestone; and that plaintiffs have no longer any right, title or interest in and to the limestone and the quarry.

63. These representations were patently false and misleading and were made for the purpose and intent of inducing others to deal with defendants and each of them instead of plaintiffs.

64. Defendants and each of them have sold the limestone and limestone product, that is the lawful property of plaintiffs, to others and has received a pecuniary gain from these actions.

65. As a result of defendants' deception, plaintiffs have suffered damages in an amount to be proven at trial.

66. Defendants' actions continue to cause plaintiffs irreparable harm. Plaintiffs are entitled to injunctive relief preventing further damage to plaintiffs.

67. Defendants' actions are willful, malicious and in bad faith. Plaintiffs are entitled to recover punitive damages in an appropriate amount but not less than \$250,000.00.

68. Because of Defendants' actions, plaintiffs have been required to obtain the services of an attorney and is entitled to attorney fees for having to bring this action.

SIXTH CAUSE OF ACTION

(Interference with Contract)

69. Plaintiffs incorporate allegations 1 through 69 into this cause of action as if full set forth herein.

70. Since the inception of the lease, plaintiffs have contacted, communicated with and entered into various agreements with third parties all for the purpose of making a commercial venture and gain from the mining, marketing and sale of limestone and limestone product from the Cherry Hill Quarry.

71. At all times relevant hereto, plaintiffs communicated these contacts, communications and agreements with third parties to defendants and each of them who through the efforts of plaintiffs became aware of and benefitted from said contacts, communications and agreements.

72. Defendants and each of them, in concert with others, directly approached many of plaintiffs' contacts, partners, business associates, clients and others and sought to enter into agreements and relationships on their own accord.

73. Defendants and each of them represented to others that plaintiffs no longer had any interest in the quarry and that they no longer were mining, marketing or otherwise carrying on mining operations for limestone.

74. Defendants and each of them did in fact enter into and began doing business with many of plaintiffs clients, business associates and others, thereby preventing plaintiffs from carrying on many important aspects related to mining of limestone.

75. Defendants' actions are willful, malicious and done in bad faith for a pecuniary gain to defendants and each of them and to ruin plaintiffs and their reputation.

76. As a result of defendants' actions, plaintiffs have been damaged in an amount to be proven at trial.

77. Defendants' actions continue to cause plaintiffs irreparable harm. Plaintiffs are entitled to injunctive relief preventing further damage to plaintiffs. Plaintiffs are entitled to recover punitive damages in an appropriate amount but not less than \$250,000.00.

78. Because of defendants' actions, plaintiffs have been required to obtain the services of an attorney and is entitled to attorney fees for having to bring this action.

WHEREFORE, Plaintiffs respectfully prays for the following relief:

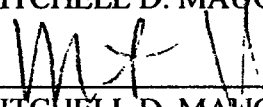
- a. For judgment against Defendant in an amount to be determined at trial, together with pre-judgment and post judgment interests as allowed by law on all causes of action.
- b. For declaratory relief declaring that the lease agreement between Stokes and plaintiffs is valid and in full force and effect and an order from the court granting plaintiffs ingress and egress to the property as to the first cause of action.
- c. For injunctive relief preventing Defendants and each of them from performing any mining activities on the property pending a resolution of this matter.
- d. For judgment against Defendant for punitive damages in an appropriate ratio to general and compensatory damages as may be determined at trial, together with pre-judgment and post judgment interests as allowed by law on the fourth, fifth and sixth cause of action.

e. For judgment against Defendant for costs and reasonable attorney's fees as may be established together with pre-judgment and post judgment interests as allowed by law.

f. For such other relief as maybe fair and equitable in the premises.

DATED this 8 day of March, 2005.

MITCHELL D. MAUGHAN, P.C.



MITCHELL D. MAUGHAN
Attorney for Plaintiffs

LEASE AND AGREEMENT

This Lease and Agreement (hereinafter referred to as "Lease") is entered into this 26th day of June, 1992 by and between E.J. Stokes an individual of North Salt Lake City, Utah, "Lessor", and Dan L. Powell and Gerald B. Powell dba Emery Industrial Resources with an address of P.O. Box 1131, Huntington, Utah 84528, "Lessee".

WITNESSETH:

1. For and in consideration of \$1000.00 receipt of which is hereby acknowledged and the royalties to be paid and the covenants and agreements hereinafter expressed, the Lessor hereby Leases to Lessee all of Lessors right, title, and interest in and to any minerals, expressly Limestone and all other related minerals located on or within Fee Lands that Lessor owns that are situated in Township 11 South, Range 8 East and in the Sections as follows:

The West 1/2 of Section 36, and the SE 1/4 of SW 1/4 of Section 25.* *Surface Rights Only, and Minerals if Lessor Vested in Section 25.* Hereinafter referred to as the "Leased Premises", and Lessor warrants and covenants that he is solely the lawful owner in Fee of the Leased Premises, both as to Mineral and Surface Estate.* Lessor hereby grants to Lessee rights of access to mine and develop said Limestone Mineral Deposits located on or within the Leased Premises. E.J.S.
G.B.P.
EJS

TO HAVE AND TO HOLD unto Lessee for a primary term of Four (4) years from June 26, 1992, to June 26, 1996, and so long thereafter as Limestone is mined from the Leased Premises in commercial quantities.

The Lessee covenants and agrees with the Lessor as follows:

2. To enter upon and hold said Leased Premises under the Lease within Ten (10) days, and carry on sampling, exploration, and development and to operate the same during the term of this Lease.

3. To furnish to the Lessor quarterly, copies of all maps, reports, drilling data and all other data of which was compiled and prepared concerning said Leased Premises.

4. To work the Leased Premises in a miner-like fashion in a manner necessary to good and economical mining so as to take out the greatest amount of ore minerals economically possible with due regard to the development and preservation of the same as workable mining property. Lessee will begin a mining operation within forty-five (45) days after Lessee has determined

the mining operation feasible.

5. To allow the Lessor or his agent, at anytime, to enter upon the Leased Premises and mines thereon for purpose of inspection, sampling and general investigation, and examining the same in ascertaining whether the terms and conditions hereof are being performed by Lessee.

6. To install and maintain full and complete books of account covering all phases of development and operation of the Leased Premises, which said books shall be open to the inspection of the Lessor or ~~his~~ representative at any and all reasonable times.

7. To pay production royalty in accordance with the provisions of Schedule "A" attached hereto.

8. This Lease may be assigned in Full or in Part, but Lessee shall not assign this Lease or any portion thereof, without the prior written consent of Lessor.

9. If Lessee fails to pay the production royalties received by Lessee payable to the Lessor, within five (5) days after the same is due, Lessor shall give notice, in writing, to the Lessee of such default and Lessee shall have seven (7) days to remedy the same and pay the amount due. If Lessee defaults in the performance of any of the other terms and conditions of this Lease, Lessor shall give notice in writing to the Lessee of the default complained of and Lessee shall have twenty (20) days from the receipt of said notice to correct such default. If such defaults are not corrected within the period set forth in this paragraph, the Lessor shall have the option to terminate this Lease and to enter upon said Leased Premises and take possession thereof, provided that Lessee shall have the right to remove his machinery and equipment from said Leased Premises for a period of thirty (30) days after such termination without the right, however, to remove timbering or other improvements of a permanent nature. Lessee shall have the right of removal of machinery and equipment at the expiration of the term of this Lease or upon termination of this Lease for any other reason.

10. Lessee agrees to furnish at his sole expense all equipment, supplies, and labor necessary in his operation on said Leased Premises.

11. Lessee may give thirty (30) days written notice to the Lessor of his intention to abandon mining operations and to terminate this Lease. At the end of the thirty (30) day period this Lease and all obligations hereunder, shall be deemed terminated and of no further force of effect, and the Lessee shall have right to remove its

machinery and equipment from said Leased Premises as herein provided, but the Lessee shall remain obligated to pay any production royalty which has become due.

12. Lessee shall not mix ores and minerals from the Leased Premises with the ores, minerals or products derived from any other property, and all ores removed from the Leased Premises will be taken directly to the ore purchaser. Lessor has the right to inspect at any time the product(s), whether they be raw or processed leaving the Premises. *DLB*

13. *Lessee* To take out, carry and maintain Industrial Insurance for any and all persons employed in or upon the Leased Premises and Lessee shall furnish a copy of the policy to Lessor. Lessee shall save Lessor harmless against the liability for or on account of personal injuries or death of any persons arising from Lessee's operation on the Leased Premises. *DLB*

14. Lessee is responsible for all reclamation and clean up and shall not leave any hazardous waste products on the Leased Premises after their operations have been completed.

15. Lessee is solely responsible for reporting to any and all government agencies related to the mining on the Leased Premises.

16. Lessee may utilize any existing structures and facilities on the Leased Premises with the exception of the existing cabin hereby reserved for Lessors use, and Lessee is expressly prohibited from processing any natural occurring alluvial gravel (Detritus Deposits) from the Leased Premises. It is fully understood and agreed between Lessor and Lessee that Limestone (Calcium Carbonate Rock) that is mined from the Leased Premises and crushed to any size (regardless of size) does not constitute gravel.

17. This Lease is subject to that Oil and Gas Lease granted by Lessor to Ernest H. Cockrell dated October 10, 1990 and recorded October 24, 1990 in Utah County Records Office as Entry #35229 in Book 2734 at Page 59, and this Lease is also subject to a Grazing Lease between Lessor and Boyd Marsing.

18. Any notices contemplated by this Lease shall be given to the Lessor addressed at the below address at North Salt Lake City, Utah or at such other address as may be designated by the Lessor, and upon Lessee at the address listed below at Huntington, Utah or to such other person and address as Lessee may designate. All notices to be given under this Lease shall be certified mail

return receipt requested, and unless receipt of said notices occurs at an earlier date shall be as of three (3) days after the date of mailing, if mailed, and delivered personally, the date of such personal delivery.

LESSOR:

E.J. Stokes
52 So. 350 E.
North Salt Lake City, Utah 84054

LESSEE:

Dan L. Powell and
Gerald B. Powell
P.O. Box 1131
Huntington, Utah 84528

19. This instrument, ^{including the Schedule "A" attached} contains the entire agreement between the parties and there are no covenants or agreements not herein set forth. *LLP* *GP*

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

LESSOR:

E.J. Stokes
E.J. Stokes

LESSEE:

Dan L. Powell
Dan L. Powell

Gerald B. Powell
Gerald B. Powell

SCHEDULE "A"
- ROYALTIES -

A. PRODUCTION ROYALTIES: Lessee shall pay Lessor a production royalty on the basis of 7% of the gross revenues, including all bonuses, benefits and allowances received by Lessee, ~~at the point of shipment from the Leased Premises of the first marketable product or products produced from the Leased substances~~ and sold at market price whether or not such product or products are produced through chemical or mechanical treating or processing of the Leased substance raw material or any other method. It is expressly understood and agreed that none of Lessee's mining or product cost, including but not limited, to material costs, labor costs, overhead costs, distribution costs, or general and administrative costs may be deducted from said gross revenues in computing Lessor's royalty. *Ores or processed products will not be sold at a price less than a competitive market rate.*

W.P. Stokes

B. Payment of Production Royalty shall be made by the Lessee to Lessor, as herein required, on or before the last day of the month next succeeding the month during which the Leased substances are mined or quarried or otherwise produced and removed from the Leased Premises, and revenues having been received by Lessee.

W.P. Stokes

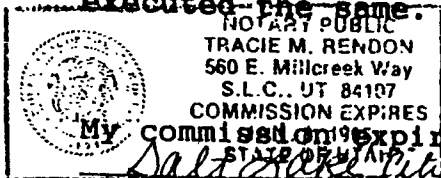
C. All payments required to be made in accordance with this schedule shall be paid by check to E. J. Stokes at the address shown in Section 18 of this Lease Agreement.

STATE OF UTAH,

County of Salt Lake) ss.

On the 26th day of June, A. D. 1992
personally appeared before me E. J. Stokes, the signer of
the within instrument, who duly acknowledged to me that he

~~executed the same.~~



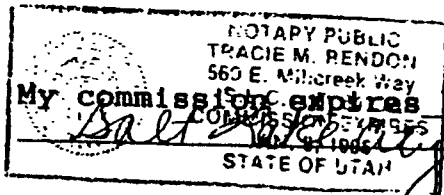
Tracie M. Rendon
Notary Public

Residing in

STATE OF UTAH,

County of Salt Lake) ss.

On the 26th day of June, A. D. 1992
personally appeared before me Dan L. Powell the signer of
the within instrument, who duly acknowledged to me that he
executed the same.



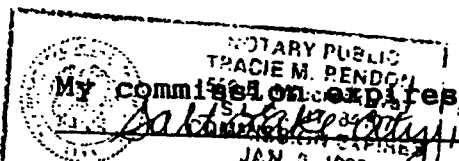
Tracie M. Rendon
Notary Public

Residing in

STATE OF UTAH,

County of Salt Lake) ss.

On the 26th day of June, A. D. 1992
personally appeared before me Gerald B. Powell the signer
of the within instrument, who duly acknowledged to me that
he executed the same.



Tracie M. Rendon
Notary Public

Residing in

LEASE AMENDMENT

This Amendment to that Lease dated 26th day of June 1992 by and between E.J. Stokes an individual of North Salt Lake City, Utah, "Lessor" and Dan L. Powell and Gerald B. Powell dba Emery Industrial Resources with address of P.O. Box 1131 Huntington, Utah 84528, "Lessee" is made and agreed to this 4th day of October, 1992 with said Lease being Amended as follows:

1. Under Schedule "A" of said Lease Agreement, Paragraph A. PRODUCTION ROYALTIES is amended to read as follows:

"Lessee shall pay Lessor a production royalty of 25 cents (.25) per ton for each and every ton of Limestone mined and removed from the Leased Premises. This Production Royalty rate will be firm and effective for four (4) years from the date of this Amendment. At the end of this period the Production Royalty paid to Lessor will be negotiated between the parties to said Lease after examining the current markets then in effect".

2. All other terms and conditions of said Lease remain the same and fully in effect.

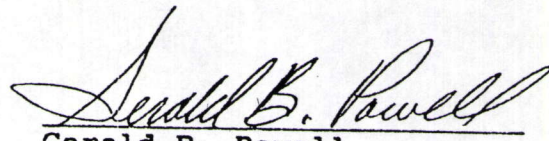
IN WITNESS WHEREOF, the parties hereto have executed this Lease Amendment the day and year as written above.

LESSOR:

LESSEE:


E.J. Stokes


Dan L. Powell


Gerald B. Powell

* Lessor has the right to gather information and negotiate Future Royalty Fees on Limestone after Ascertaining if The price of \$.25 per ton is a Fair Market price. The \$.25 per ton is a FIRM PRICE ONLY FOR the Following Market Bids. 1-Sunnyside Power Plant 2-BONANZA Power Plant 3. Valle Asphalt For Road Base materials 4- (1) (1). Cludo For Road Base